



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 16, 2003

Mr. Robert R. Ray
Assistant City Attorney
City of Longview
P. O. Box 1952
Longview, Texas 75606-1952

OR2003-2588

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179549.

The City of Longview (the "city") received a request for "copies of the disciplinary files and appeals on [two specified sergeants], plus copies of the video tapes related to the investigation." You state that you have released some responsive information to the requestor. You claim, however, that the remaining requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101, 552.117, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the submitted videotape is excepted from disclosure in its entirety pursuant to section 552.1175 of the Government Code. Section 552.1175 provides in pertinent part:

(a) This section applies only to:

...

(2) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a), (b). Based on our review of your arguments and the submitted videotape, we find that the videotape contains several references to the types of information that may be confidential under section 552.1175 and that the references are so inextricably intertwined that it would be difficult to edit the tape so as not to reveal this information. Accordingly, we conclude that the city must withhold the submitted videotape, as well as the audio associated with the videotape, in its entirety pursuant to section 552.1175, if the individual who is the subject of the videotape elects confidentiality for this information with the city under section 552.1175 as a current peace officer or if he previously elected confidentiality for this information with the city under section 552.1175 at a time when he was a peace officer. Otherwise, we conclude that the city may not withhold any portion of the submitted videotape pursuant to section 552.1175 of the Government Code. In the event that the city may not withhold such information on the basis of section 552.1175, we will address your other claimed exceptions to disclosure with regard to the submitted videotape.

You also claim that the submitted videotape is excepted from disclosure in its entirety pursuant to section 552.117 of the Government Code. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this information be kept confidential under section 552.024. *See* Gov't Code § 552.117(1). Section 552.117(2) excepts from disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members. *See* Gov't Code § 552.117(2). We note, however, that the protections of section 552.117 only apply to information that the governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information in hands of their employer); *see also* Gov't Code § 552.024 (establishing election process for Gov't Code § 552.117). In this instance, however, the submitted videotape is held by the city in the context of a criminal matter and not as employer information. Accordingly, we conclude that the city may not withhold any portion of the submitted information pursuant to section 552.117 of the Government Code.

We note that the submitted videotape contains an image that may be excepted from disclosure pursuant to section 552.119 of the Government Code. Section 552.119 excepts from disclosure a photograph of a peace officer that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies.¹ The three exceptions

¹ The term "peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. *See* Gov't Code § 552.119(a). This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. *See* Open Records Decision No. 502 (1988). Assuming that none of the exceptions under section 552.119(a) apply in this instance and that the individual depicted in the submitted videotape was a peace officer at the time that the city received this request for information, we conclude that the city must withhold the depiction of the former city police officer pursuant to section 552.119 of the Government Code.

You claim that the submitted documents are excepted from disclosure in their entirety pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.² The common-law right to privacy protects information from disclosure if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. Based on our review of your arguments and the submitted documents, we find that no portion of the documents is protected from disclosure under the common-law right to privacy. Accordingly, we conclude that the city may not withhold any portion of the submitted documents pursuant to section 552.101 in conjunction with the common-law right to privacy. However, we note that the release of portions of the submitted videotape would implicate the privacy interests of an individual depicted in the videotape. Accordingly, we conclude that the city must redact these portions of the submitted videotape pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. We have noted on the outside of the videotape which portions must be redacted.

We also note that some of the submitted documents contain social security numbers that may be excepted from disclosure pursuant to section 552.101 in conjunction with federal law. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). The city has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain these social security numbers. Therefore, we have no basis for concluding they are confidential under federal law. We caution the city, however, that

² Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy.

section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, the city should ensure that they were not obtained or are not maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

Finally, you claim that portions of the submitted documents are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, we conclude that you must withhold the drivers' license numbers that you have marked within the submitted documents pursuant to section 552.130 of the Government Code, but only if the numbers constitute Texas drivers' license numbers. Otherwise, we conclude that the city must release these numbers to the requestor.

In summary, the city must withhold the submitted videotape, as well as the audio associated with the videotape, in its entirety pursuant to section 552.1175, if the individual who is the subject of the videotape elects confidentiality for this information with the city under section 552.1175 as a current peace officer or if he previously elected confidentiality for this information with the city under section 552.1175 at a time when he was a peace officer. Otherwise, the city must: 1) withhold the depiction of the former city police officer in the submitted videotape pursuant to section 552.119 of the Government Code, if no exception under that section is applicable in this instance and the individual depicted was a peace officer at the time that the city received this request; 2) redact the indicated portions of the videotape pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy; and 3) release the remaining portions of the videotape to the requestor. Social security numbers that are contained within the submitted documents may be confidential under federal law. The city must withhold the drivers' license numbers that you have marked within the submitted documents pursuant to section 552.130 of the Government Code, if the numbers constitute Texas drivers' license numbers. The city must release the remaining information in the submitted documents to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general

have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

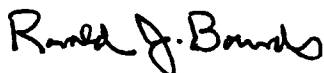
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 179549

Enc. Submitted documents and videotape

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